

ASSEMBLY BILL

No. 2246

Introduced by Assembly Member Blakeslee

February 18, 2010

An act to amend Section 273.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2246, as introduced, Blakeslee. Domestic violence.

Existing law requires that any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child corporal injury resulting in a traumatic condition, is guilty of a felony and upon conviction is punished by imprisonment in the state prison for 2, 3, or 4 years, or in a county jail for not more than one year, or by a fine of up to \$6,000, or by both that fine and imprisonment.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 273.5 of the Penal Code is amended to
2 read:

3 273.5. (a) Any person who willfully inflicts *corporal injury*
4 *resulting in traumatic condition* upon a person who is his or her
5 spouse, former spouse, cohabitant, former cohabitant, or the mother
6 or father of his or her child, ~~corporal injury resulting in a traumatic~~

1 ~~condition~~, is guilty of a felony, and upon conviction thereof shall
2 be punished by imprisonment in the state prison for two, three, or
3 four years, or in a county jail for not more than one year, or by a
4 fine of up to six thousand dollars (\$6,000), or by both that fine and
5 imprisonment.

6 (b) Holding oneself out to be the husband or wife of the person
7 with whom one is cohabiting is not necessary to constitute
8 cohabitation as the term is used in this section.

9 (c) As used in this section, “traumatic condition” means a
10 condition of the body, such as a wound or external or internal
11 injury, whether of a minor or serious nature, caused by a physical
12 force.

13 (d) For the purpose of this section, a person shall be considered
14 the father or mother of another person’s child if the alleged male
15 parent is presumed the natural father under Sections 7611 and 7612
16 of the Family Code.

17 (e) (1) Any person convicted of violating this section for acts
18 occurring within seven years of a previous conviction under
19 subdivision (a), ~~or~~ subdivision (d) of Section 243, or Section 243.4,
20 244, 244.5, or 245, shall be punished by imprisonment in a county
21 jail for not more than one year, or by imprisonment in the state
22 prison for two, four, or five years, or by both imprisonment and a
23 fine of up to ten thousand dollars (\$10,000).

24 (2) Any person convicted of a violation of this section for acts
25 occurring within seven years of a previous conviction under
26 subdivision (e) of Section 243 shall be punished by imprisonment
27 in the state prison for two, three, or four years, or in a county jail
28 for not more than one year, or by a fine of up to ten thousand
29 dollars (\$10,000), or by both that imprisonment and fine.

30 (f) If probation is granted to any person convicted under
31 subdivision (a), the court shall impose probation consistent with
32 the provisions of Section 1203.097.

33 (g) If probation is granted, or the execution or imposition of a
34 sentence is suspended, for any defendant convicted under
35 subdivision (a) who has been convicted of any prior offense
36 specified in subdivision (e), the court shall impose one of the
37 following conditions of probation:

38 (1) If the defendant has suffered one prior conviction within the
39 previous seven years for a violation of any offense specified in
40 subdivision (e), it shall be a condition thereof, in addition to the

1 provisions contained in Section 1203.097, that he or she be
2 imprisoned in a county jail for not less than 15 days.

3 (2) If the defendant has suffered two or more prior convictions
4 within the previous seven years for a violation of any offense
5 specified in subdivision (e), it shall be a condition of probation,
6 in addition to the provisions contained in Section 1203.097, that
7 he or she be imprisoned in a county jail for not less than 60 days.

8 (3) The court, upon a showing of good cause, may find that the
9 mandatory imprisonment required by this subdivision shall not be
10 imposed and shall state on the record its reasons for finding good
11 cause.

12 (h) If probation is granted upon conviction of a violation of
13 subdivision (a), the conditions of probation may include, consistent
14 with the terms of probation imposed pursuant to Section 1203.097,
15 in lieu of a fine, one or both of the following requirements:

16 (1) That the defendant make payments to a battered women's
17 shelter, up to a maximum of five thousand dollars (\$5,000),
18 pursuant to Section 1203.097.

19 (2) That the defendant reimburse the victim for reasonable costs
20 of counseling and other reasonable expenses that the court finds
21 are the direct result of the defendant's offense.

22 For any order to pay a fine, make payments to a battered
23 women's shelter, or pay restitution as a condition of probation
24 under this subdivision, the court shall make a determination of the
25 defendant's ability to pay. In no event shall any order to make
26 payments to a battered women's shelter be made if it would impair
27 the ability of the defendant to pay direct restitution to the victim
28 or court-ordered child support. Where the injury to a married person
29 is caused in whole or in part by the criminal acts of his or her
30 spouse in violation of this section, the community property may
31 not be used to discharge the liability of the offending spouse for
32 restitution to the injured spouse, required by Section 1203.04, as
33 operative on or before August 2, 1995, or Section 1202.4, or to a
34 shelter for costs with regard to the injured spouse and dependents,
35 required by this section, until all separate property of the offending
36 spouse is exhausted.

37 (i) Upon conviction under subdivision (a), the sentencing court
38 shall also consider issuing an order restraining the defendant from
39 any contact with the victim, which may be valid for up to 10 years,
40 as determined by the court. It is the intent of the Legislature that

1 the length of any restraining order be based upon the seriousness
2 of the facts before the court, the probability of future violations,
3 and the safety of the victim and his or her immediate family. This
4 protective order may be issued by the court whether the defendant
5 is sentenced to state prison, county jail, or if imposition of sentence
6 is suspended and the defendant is placed on probation.

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